AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA

11222 Quail Roost Drive
Miami, Florida 33157

NAIC COMPANY CODE 10111

MARKET CONDUCT EXAMINATION REPORT
as of December 31, 2003

PREPARED BY INDEPENDENT CONTRACTORS FOR THE COLORADO DEPARTMENT OF REGULATORY AGENCIES DIVISION OF INSURANCE

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA
11222 Quail Roost Drive
Miami, Florida 33157

MARKET CONDUCT EXAMINATION REPORT as of December 31, 2003

Prepared by

James T. Axman, CIE

Frederick T. Verny, Jr., AIE, FLMI

Independent Contract Examiners

September 23, 2004

The Honorable Doug Dean
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Dean:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, rating, and claims practices of American Bankers Insurance Company Of Florida private passenger automobile business, has been conducted. The Company's records were examined at its Home Office, 11222 Quail Roost Drive, Miami, Florida 33157.

The examination covered a one-year period from January 1, 2003 to December 31, 2003.

A report of the examination of American Bankers Insurance Company Of Florida is, herewith, respectfully submitted.

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James T. Axman, CIE

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Frederick T. Verny, Jr., AIE, FLMI

Independent Market Conduct Examiners

MARKET CONDUCT
EXAMINATION REPORT
OF THE
AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA

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COMPANY PROFILE

American Bankers Insurance Company Of Florida ("ABIC") was incorporated in 1947. Subsequently, the Company became a public company trading on the over-the-counter market. In 1980, there was a tax-free reorganization whereby a holding company was formed. All of the Company's shares held by the public were surrendered at that time in exchange for shares of the holding company, American Bankers Insurance Group ("ABIG"). In turn, the Company received and currently holds all of the Company's issued and outstanding stock, 5,083,164 common shares as evidenced by a single stock certificate.

During the period of examination, 2003, ABIG continues to be the sole shareholder of ABIC. The ABIC issued and outstanding stock certificate is held by the Office of the Secretary in the Corporation vault located in Miami, Florida as well as the corporate seal for the company.

The Company was licensed in Colorado to sell multiple-lines products as of 1977.

*As of the calendar year 2003 the Company reported written premium in Colorado of $27,114,000 for Private Passenger Automobile Insurance, representing a 0.94 % market share.

*Data as reported in the 2003 Colorado Insurance Industry Statistical report.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law §10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to Private Passenger Automobile insurance. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2003 to December 31, 2003.

File sampling was based on a review of underwriting and claims files that were systematically selected by using ACL™ software and computer data files provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars ($10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero ($0) tolerance level was applied in order to identify possible system errors. Additionally, a zero ($0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

The report addresses only Private Passenger Automobile issues and contains information regarding exceptions to Colorado insurance law. The examination included review of the following:

1. Company Operations and Management
2. Underwriting
3. Rating
4. Claims Practices

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's Private Passenger Automobile underwriting, rating, and claims practices to determine compliance with the Colorado insurance law as outlined in Exhibit 1.

Exhibit 1

Law	Subject
Section 10-1-128	Fraudulent Insurance Acts.
Section 10-4-413	Records required to be maintained
Section 10-4-602.	Basis for Cancellation.
Section 10-4-603.	Notice.
Section 10-4-604.	Nonrenewal.
Section 10-4-605.	Proof of notice.
Section 10-4-609.	Insurance protection against uninsured motorists-applicability.
Section 10-4-610.	Property damage protection against uninsured motorists.
Section 10-4-611.	Elimination of discounts – damage by uninsured motorist.
Section 10-4-613.	Glass repair and replacement.
Section 10-4-614.	Inflatable restraint systems - replacement - verification of claims.
Section 10-4-626	Prohibited reasons for nonrenewal or refusal to write auto
Section 10-4-627	Discriminatory standards-proof of financial responsibility
Section 10-4-628	Refusal to write – changes in – cancellation-nonrenewal prohibited
Section 10-4-629	Cancellation-renewal-reclassification
Section 10-4-630	Exclusion of named driver
Section 10-4-632	Reduction in rates for drivers aged 55 or older with drivers educatio
Section 10-4-633	Certification of policy and notice forms
Section 10-4-706.	Required coverages - complying policies - PIP examination prograr
Section 10-4-706.5.	Operator's policy of insurance.
Section 10-4-707.5.	Ridesharing arrangements - benefits payable - required coverage.
Section 10-4-708.	Prompt payment of direct benefits.
Section 10-4-709.	Coordination of benefits.
Section 10-4-710.	Required coverages are minimum.
Section 10-4-711.	Required provision for intrastate and interstate operation.
Section 10-4-713.	No tort recovery for direct benefits.
Section 10-4-714.	Limitation on tort actions.
Section 10-4-715.	No limitation on tort action against non-complying tort-feasors.
Section 10-4-717.	Inter-company arbitration.
Section 10-4-718.	Quarterly premium payments.
Section 10-4-719.	Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 7.
Section 10-4-719.5.	Discriminatory standards - premiums - surcharges - proof of financ responsibility requirements.
Section 10-4-719.7.	Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited.

Section 10-4-720.	Cancellation - renewal - reclassification.
Section 10-4-721.	Exclusion of named driver.
Section 10-4-724.	Reduction in rates for drivers aged fifty-five years or older who complete a driver's education course - legislative declaration.
Section 10-4-725.	Certification of policy and notice forms.
Section 10-3-1103.	Unfair methods of competition and unfair or deceptive acts or practices prohibited.
Section 10-3-1104.	Unfair methods of competition and unfair or deceptive acts or practices.
Regulation 1-1-7.	Market Conduct Record Retention.
Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests
Regulation 5-1-2.	Application and Binder Forms.
Regulation 5-1-10.	Rate and Rule Filing Regulation
Regulation 5-1-16.	Limitations on the Use of Credit Information or Insurance Scor
Regulation 5-2-1.	Relative Value Schedule for No Fault.
Regulation 5-2-2.	Renewal of Automobile Insurance Policies – Excluded Named Drivers.
Regulation 5-2-3.	Amended Auto Accident Reparations Act (No Fault) Rules and Regulations
Regulation 5-2-6.	Automobile No Fault Cost Containment Options.
Regulation 5-2-8.	Timely Payment of Personal Protection Benefits.
Regulation 5-2-9.	Personal Injury Protection Examination Program.
Regulation 5-2-11	Transition from No-Fault Auto to Tort System.
Regulation 5-2-12	Automobile Insurance Consumer Protections.
Regulation 6-1-1.	Limiting coverage.
Regulation 6-2-1.	Complaint Record Maintenance.

Company Operations/Management

The examiners reviewed Company management, implementation, and quality controls, record retention, installment payment plans, anti-fraud plan, forms certification, and timely cooperation with the examination process.

Complaints

The examiners reviewed the complaint database log maintained by the Division of Insurance as a general guideline to determine complaint activity for the period under examination. The report displayed a trending of instances involving claim delays, however, in review of the paid claims sample , no excessive delays were noted.

Contract Forms and Endorsements

The following Private Passenger Automobile forms and endorsements were filed for certification with the Colorado Division of Insurance on June 26, 2003: These forms were also reviewed to determine compliance with Colorado law.

Title	Form
Colorado Private Passenger Automobile Insurance Disclosure Form	N2052-(07/03)
Personal Auto Declarations	AH9644DP-(07/03)
Personal Auto Policy	AH9636PP-(07/03)
Special Equipment Coverage	AH9686AP-(03/00)
Vehicle Inspection Report	N2099-(03/00)
Notice of Payment	N2010-(06/99)
Notice of Reinstatement	N2012-(06/99)
Colorado Automobile Insurance Card	N2063-(03/00)
Financial Responsibility Form	N2064-(03/00)
Policy Expiration Notice	N2065-(03/00)
Renewal Payment Notice	N2066-(03/00)
Uninsured/Underinsured Motorists Bodily Injury Coverage Selection	N2067-(07/03)
Named Driver Exclusion	AH9651EP-(03/00)
Notice To Policyholders (Tort Coverage)	N8055-(07/03)

In-force Business /Cancellations/Non-renewals/Surcharges/PIP Conversion

For the period under examination, systematically selected samples were taken as follows:

Review Lists	Population	Sample Size	Percentage to Population
In-Force Business	263,028	100	<1%
Cancellations Other	251	50	20%
Nonrenewals	0	0	0%
Surcharges	2,188	50	2.3%
PIP Conversion	14,790	100	1.47%

Rating

The examiners reviewed the rate, rule filings, statistical justifications, and methodology submitted to Colorado Division of Insurance for the period under examination. This information was compared against a sample of in-force policies, rated by coverage selection, to determine compliance with filed base rates, territory codes, symbols, class plans, discounts, tier-rating factors, and final premium calculations.

Claims

For the period under examination, the examiners systematically selected the following samples to determine compliance with claims handling practices and manual rules:

Review Lists	Population	Sample Size	Percentage to Population
Claims Paid	2070	50	2%
Claims Paid - PIP	1102	50	5%
Claims Not Paid - CWP	494	50	10%

EXAMINATION REPORT SUMMARY

The examination resulted in seven (7) issues arising from the Company's apparent failure to comply with Colorado insurance laws that govern all property and casualty insurers operating in Colorado. These issues involved the following categories:

Company Operations and Management:

In the area of company operations and management one (1) compliance issue is addressed in this report: The issue in this phase is identified as follows:

- Failure to adequately maintain records required for market conduct review.

It is recommended that the Company review its record maintenance procedures, and make necessary changes to ensure future compliance with applicable statutes and regulations.

Complaint Handling:

In the area of complaint handling, no compliance issues are addressed in this report.

Underwriting:

In the area of underwriting, two (2) compliance issues are addressed in this report. Issues arise from Colorado insurance law requirements that must be complied with whenever policies are issued, canceled, rejected, non-renewed, or surcharged. The issues in this phase are identified as follows:

- Failure to properly notify policyholders of a premium increase at policy renewal.

- Failure to provide the proper notification form for a cancellation.

It is recommended that the Company review its underwriting practices and procedures, and make necessary changes to ensure future compliance with applicable statutes and regulations as to each issue addressed.

Rating:

In the area of rating, two (2) compliance issues are addressed in this report. Issues arise from Colorado insurance law requirements involving rate, rule filings, statistical justifications, and methodology and the rating of policies with compliance towards base rates, territory codes, symbols, class plans, discounts, tier-rating factors, and final premium calculations.

- Failure to file an Actuarial justification for using a prior insurance discount.

- Failure to include policy and renewal fees in the development of rate filings for Private Passenger Automobile policies that are issued or renewed in transacting the business of insurance.

It is recommended that the Company review its underwriting practices and procedures, and make necessary changes to ensure future compliance with applicable statutes and regulations as to each issue addressed.

Claim Practices:

In the area of claim practices, two (2) compliance issues are addressed in this report. Issues arise from Colorado insurance law requirements dealing with the fair and equitable settlement of claims, claims handling practices, payment of PIP claim benefits, and the timeliness and accuracy of claim payments. The issues in this phase are identified as follows:

- Delay in the payment of PIP benefits.
- Failure, in some cases, to handle claims properly.

It is recommended that the Company review its claim handling practices and procedures, and make necessary changes to ensure future compliance with applicable statutes and regulations as to each issue addressed.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of any previous Market Conduct Exams are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA

PERTINENT FACTUAL FINDINGS

PERTINENT FACTUAL FINDINGS

COMPANY OPERATIONS

Issue A: Failure to adequately maintain records required for market conduct review.

Section 10-4-413, C.R.S. Records required to be maintained, states in part:

> (1) Every insurer, …shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group or association complies with the provisions of this part 4 applicable to it...

Additionally, Colorado Regulation 1-1-7, promulgated under the authority of Section 10-1-109, C.R.S. states in part:

Section 4. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

> A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.
>
> B. Each producer of record, if the carrier does not maintain, shall maintain records for each policy sold, and the records shall contain all work papers and written communications in the producer's possession pertaining to the documented policy.

Section 6. CLAIM RECORDS

> The claim records shall be maintained so as to show clearly the inception, handling and disposition of each claim. The claim records shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed.

A. The record shall include at least the notification of claim, proof of loss, (or other form of claim submission) claim forms, proof of claim payment check or draft, notes, contract, declaration pages, information on type of coverage, endorsements or riders, work papers, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, payment or denial of the claim, and any claim manuals or other information necessary for reviewing the claim. Where a particular document pertains to more than one record, insurers may satisfy the requirements of this paragraph by making available, at the site of a market conduct examination, a single copy of each document.

B. Documents in a claim record received from an insured, the insured's agent, a claimant, the department or any other insurer shall bear the initial date of receipt date-stamped by the insurer in a legible form in ink, an electronic format, or some other permanent manner. Unless the company provides the examiners with written procedures to the contrary, the earliest date stamped on a document will be considered the initial date of receipt.

C. If an insurer, as its regular business practice, places the responsibility for handling certain types of claims upon company personnel other than its claims personnel, the insurer need not duplicate its records for maintenance by claims personnel. These claims records shall be maintained as part of the records of the insurer's operations and shall be readily available to examiners.

The Company could not provide the examiners with three (3) Underwriting cancellations and four (4) Claim files to facilitate the market conduct review. Underwriting and claims files are to be maintained as required by the above-captioned Colorado insurance law and provided in a timely manner in order to expedite the examination review.

Recommendation # 1

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-413, C.R.S. and Colorado Regulation 1-1-7. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has amended its document maintenance and retrieval procedures to ensure compliance with Colorado insurance law.

PERTINENT FACTUAL FINDINGS

UNDERWRITING

Issue B: Failure to properly notify policyholders of a premium increase at policy renewal.

Section 10-4-629, C.R.S., Cancellation - renewal - reclassification, effective 7/1/03, states, in part:

(1) Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.

(2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:

Section 10-4-720, C.R.S., Cancellation-Renewal-reclassification, states, in part:

(1) Except in accordance with the provisions of this part 7, no insurer shall cancel or fail to renew a policy of insurance which complies with this part 7, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 7.

(2) An insurer intending to take an action subject to the provisions of this section shall, on or before thirty days prior to the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at his last known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form which has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules or regulations promulgated by the commissioner:

The Company did not have an internal procedure utilizing certified surcharge notifications where a premium increase was involved at renewal, therefore not giving advance notifications of premium increase as required by the Colorado Insurance law.

Due to the absence of surcharge notifications, the following *elements of a premium increase* could not be determined for compliance:

- Reason for premium increase;
- Named driver exclusion offer options;
- Right to protest provision;
- Timely notification of an increase in premium;
- Notification of the Colorado Assigned Risk Plan;
- Determination as to whether the increase was excessive or discriminatory;
- Determination as to whether the Company used citations without convictions;
- Determination as to whether not-at-fault accidents were used;
- Determination as to whether the Company used accidents with less than $1,000 in payment;
- The separate amount of increase apart from renewal premium;
- The percentage of increase compliant with Company underwriting rules.
- Determination as to whether the Company used uninsured motorists, towing, or comprehensive claims;

The following chart illustrates the significance of error versus the population and sample examined:

Private Passenger Automobile Surcharges

Population	Sample Size	Number of Exceptions	Percentage to Sample
2188	50	50	100%

An examination of fifty (50) policies surcharged, representing 2% of those policies surcharged by the Company during the examination period, showed fifty (50) exceptions (or 100% of the sample) wherein the Company failed to provide proper surcharge notification to policyholders at renewal for a premium increase as required by Colorado insurance law.

Recommendation #2:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-629 and 10-4-720, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has instituted a procedure whereby a certified surcharge notification form is sent to all policyholders where a premium increase is evident at renewal in order to ensure compliance with Colorado insurance law.

Issue C: Failure to provide the proper notification form for a cancellation.

Section 10-4-720, C.R.S., Cancellation-renewal-classification, states, in part: …

(2) An insurer intending to take an action subject to the provisions of this section shall, on or before thirty days prior to the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at his last known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form which has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules or regulations promulgated by the commissioner:

(a) The proposed action to be taken, …

(b) The proposed effective date of the action;

(c) The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).

Section 10-4-629. Cancellation - renewal - reclassification.

(1) Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.

(2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:

(a) The proposed action to be taken, including, if the action is an increase in premium or reduction in coverage, the amount of increase and the type of coverage to which it is applicable or the type of coverage reduced and the extent of the reduction;

(b) The proposed effective date of the action;

(c) The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).

(d) If there is coupled with the notice an offer to continue or renew the policy in accordance with section 10-4-628, the name of the person or persons to be excluded from coverage and what the premium would be if the policy is continued or renewed with such person or persons excluded from coverage;

(e) The right of the insured to replace the insurance through an assigned risk plan;

(f) The right of the insured to protest the proposed action and request a hearing thereon before the commissioner by signing two copies of the notice and sending them to the commissioner within ten days after receipt of the notice;

(g) That, if a protest is filed by the insured, the current insurance will remain in effect until a determination is made by the commissioner upon payment of any lawful premium due or becoming due prior to the determination;

(h) The authority of the commissioner to award reasonable counsel fees to the insured for services rendered to the insured in connection with any such hearing if the commissioner finds the proposed action of the insurer to be unjustified.

Colorado Regulation 5-2-3 [Amended 05/01/2002]. Auto Accident Reparations Act (No-Fault) Rules And Regulations, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue under the authority of Sections 42-1-204, 104-704, 10-4-718, 10-4-719.7, and 10-1-109,C.R.S. states, in part:

Section 3. Rules E. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

2. Notice of proposed actions.

a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by §10-4-720 (2), C.R.S. Only one notice is required to be sent to the insured whose incident resulted in the proposed action. The statement of reasons shall be clear and specific so that a reasonable person can

understand it. The insurer shall clearly describe its underwriting rule, policy or guideline which is the basis for the proposed action. A simple recitation of dates and incidents, without further detail, is not acceptable and may cause the insurer's proposed action to be disallowed.

b. Insurers proposing to cancel, nonrenew, increase premium or reduce coverage shall prominently display on the notice form, within or adjoining the paragraph entitled "Your Right to Protest", the following premium payment instructions: In order to continue your coverage during the period the proposed action is protested, you must continue to make payments according to your current premium payment plan until a decision is made by the hearing officer. You may contact your producer (agent) or the company at (phone number) for further information. Please note that the company may bill you later for any premium difference occurring if the company's action is upheld. This is the only notification you will receive to pay the premium due to continue coverage. If the premium is not paid prior to the effective date of the action listed on the notice, the coverage will lapse.

Section 10-4-606, C.R.S. Further Notice, states as follows:

> When automobile bodily injury and property damage liability coverage is cancelled, other than for nonpayment of premium, or in the event of failure to renew automobile bodily injury and property damage liability coverage to which section 10-4-604 applies, the insurer shall notify the named insured of his possible eligibility for automobile liability insurance through an assigned risk plan established pursuant to section 10-4-412 and shall notify the insured as to where he may obtain information concerning such plan. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew.

During the examination review of cancellations, it was noted that the form being used by the Company did not appear to be in compliance with Colorado insurance law in that it did not contain all the required notification elements. Under cancellation actions, other than for nonpayment of premium, the Company is required to have displayed on the form, as a minimum, the following elements:

Right to Protest Action language;
Offer of the Colorado assigned risk plan;
Named driver Exclusion provision;

Additionally, it was noted that the Company was using "Underwriting reason" as the basis for cancellation, without further describing this action with a reference to the specific underwriting rule(s) supporting this action.

Since the Company renews all its policies every thirty (30) days, any cancellation action, aside from non-payment of premium, would be considered a "mid-term" cancellation requiring the same guidelines used for policies that have been in effect for six (6) months.

Recommendation # 3:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-720, 10-4-629, and 10-4-606, C.R.S., and Regulation 5-2-3 [amended]. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has amended and certified its cancellation form to include all required provisions to ensure compliance with Colorado insurance law.

PERTINENT FACTUAL FINDINGS

RATING

Issue D: Failure to file an Actuarial justification for using a prior insurance discount.

Section 10-4-628, C.R.S. Refusal to write - changes in - cancellation - nonrenewal of policies prohibited, states in part.

(2)(a)(I) No insurer shall cancel; fail to renew; reclassify an insured under; reduce coverage under, unless the reduction is part of a general reduction in coverage filed with the commissioner; or increase the premium for, unless the increase is part of a general increase in premiums filed with the commissioner, any complying policy solely because the insured person has been convicted of an offense related to the failure to have in effect compulsory motor vehicle insurance or because such person has been denied issuance of a motor vehicle registration for failure to have such insurance.

(II) Unless actuarial justification in support of the insurer's action that has been filed with the commissioner demonstrates that there is an increase in risk, no insurer shall refuse to write a policy for a new applicant, surcharge the premium of a new applicant, or place a new applicant in a higher-priced program or plan based solely upon:

(A) The fact that the applicant had no prior insurance;

(B) The identity of the applicant's prior insurer; or

(C) The applicant's prior type of coverage, including assigned risk or residual market coverage or any plan other than a preferred plan.

(III) An insurer may use industry-wide data in its actuarial justification under subparagraph (II) of this paragraph (a).

(IV) An insurer shall not refuse to write a policy for a new applicant, surcharge the premium of a new applicant, or place a new applicant in a higher-priced program or plan solely because the applicant had no prior insurance if the applicant was not required to have insurance under section 10-4-620 or under a similar law in another state.

Colorado Amended Regulation 5-2-3 (E)(1)(b)(1). Auto Accident Reparations Act (No-Fault) Rules And Regulations, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue under the authority of §§ 42-1-204, 10-4-704, 10-4-718, 10-4-719.7, and 10-1-109, C.R.S. states, in part:

E. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

1. Basis for refusal to write a policy of automobile insurance.

b. Unless actuarial justification in support of the insurer's action has been filed with the Division of Insurance, insurers shall not refuse to write a

> policy for new applicants, surcharge premiums of new applicants or place new applicants in higher priced programs or plans solely based on:
>
> (1) The fact that the applicant had no prior insurance;
>
> (2) The identity of the applicant's prior insurer; or
>
> (3) The applicant's prior type of coverage, including assigned risk or residual market coverage or any plan other than a preferred plan.

Additionally, in 1998, "The Notice to All Insurers" [now incorporated into Colorado amended Regulation 5-2-3, Section 3.E.1.b], effective February 1, 1998, and Senate Bill 98-12, was previously disseminated to all Private Passenger Auto Insurance Companies, and stated in part, the following:

> "Actuarial justification means numerical demonstration of a difference in expected risk between person with prior insurance and those without, after other risk affecting considerations such as age and geographic location have been factored out. Older filings should be updated with more current data and supported with acceptable actuarial justification. You are strongly encouraged to re-file if your current filing is more than two years old or if your current filing is not supported by proper actuarial justification as defined herein."

The Company's underwriting manual contained a transfer discount on page 10 which stated the following guideline:

> "10% - Requires proof of continuous coverage through the current or prior insurer for at least six (6) months. Acceptable proof is a renewal offer, nonrenewal notice or letter of experience."
>
> "NOTE: It is assumed that unless proof is given no discounts will apply. Proof must be received prior to the policy being Issued. Once issued, the discounts will be applied effective the date received by the Company."

It appeared that the Company was using evidence of prior insurance in new business applications to modify the premium, whereby applicants with no prior insurance were charged a higher premium rate in comparison to applicants who did have prior insurance therefore receiving a discount. This application of a discount appeared to be discriminatory requiring an actuarial justification.

Recommendation # 4:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-628, C.R.S, and Colorado Regulation [amended] 5-2-3. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has filed an actuarial justification for its use of the prior insurance discount in rating new applicants in order to ensure compliance with Colorado insurance law.

Issue E: Failure to include policy and renewal fees in the development of rate filings for Private Passenger Automobile policies that are issued or renewed in transacting the business of insurance.

Section 10-4-404.5, C.R.S. Rating plans - property and casualty type II insurers - rules and regulations, states in part.

> The commissioner may promulgate rules and regulations for type II insurers which establish reasonable standards for rating plans, including experience rating plans, schedule rating plans, and expense reduction plans, and which are designed to modify rates in the development of premiums for individuals risks insured in the property and casualty insurance market. Such rules and regulations may permit recognition of expected differences in loss and expense characteristics and shall be designed so that such plans are reasonable and equitable in their application and are not unfairly discriminatory. Such rules and regulations shall not prevent the development of new rating methods which would otherwise comply with this part 4. The rules and regulations may establish maximum charges against and credits to the experience rating of an insured that may result from the application of a rating plan. The rules and regulations may encourage the use of loss control programs, safety programs, and other methods of risk management and may require insurers to maintain documentation of the basis for the charges and credits applied under any plan. The rules and regulations may also require the rating plans to include merit rating to the extent feasible.

Colorado Regulation 5-1-10 (Rate and Rule Filing Regulation), states in part:

> III. Rules
> A. DEFINITIONS.
>
> > 11. "Rating Data" means the rates, schedule of rates, rating plans, rating classifications, territories, rating rules, and any other information which the insurer uses to determine the final dollar charge for an insurance coverage.
>
> B. RATE AND RULE FILING REQUIREMENTS.
>
> 1. Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

Section 10-1-102, C.R.S. states:

> (12) "Insurance" means a contract whereby one, *for consideration*, [emphasis added] undertakes to indemnify another or to pay a specified or ascertainable amount …

Policy fees would be part of the consideration in insurance, since the policy would not be issued without the payment of the fees and is used to pay insurance related expenses.

Section 10-3-903, C.R.S. Definition of transacting insurance business, states as follows:

> (d) The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof; (Also see CRS 10-3-909)

Section 10-3-209, C.R.S. Tax on premiums collected - exemptions – penalties, states:

> (1) (a) All insurance companies writing business in this state, including, without limitation, those defined in section 10-1-102 (6), shall pay to the division of insurance a tax on the gross amount of all premiums collected or contracted for on policies or contracts of insurance covering property or risks in this state during the previous calendar year, after deducting from such gross amount the amount received as reinsurance premiums on business in this state, and the amount refunded under credit life and credit accident and health insurance policies on account of termination of insurance prior to the maturity date of the indebtedness, and, in the case of companies other than life, the amounts paid to policyholders as return premiums, which shall include dividends or unabsorbed premiums or premium deposits returned or credited to policyholders.

In the Company's Private Passenger Automobile Underwriting manual, page 2, Dated 11/02, the following was stated:

> FEES
> All fees are fully earned and non-refundable and include the following:
>
> $30.00 New Business
> $ 8.00 New Business Transfer Fee (If an existing agency insured transfers from another carrier to American Bankers Insurance Company we will waive the $30 New Business Fee. The insured will be charged an $8 New Business Transfer Fee.)
> $ 8.00 Renewal
> $ 8.00 Installment
> $ 8.00 Endorsement (Increase Premium)
> $20.00 Non Sufficient Funds
> $15.00 SR-22 Processing

During the examination, it was noted after a review of the rate filings and the underwriting manual, that because the fees are necessary for the Company to issue or renew a Private Passenger Auto policy and are directly involved with transacting the business of insurance, the fees then would be considered part of the rate or total premium and should have been included in the Company's rate development.

Because the underwriting manual was not required to be filed for certification with the DOI during the scope of this examination, and since the fees were only included in the underwriting manual, and were considered part of a rate filing for the same period, the fees would therefore be considered as unfiled.

Recommendation # 5:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-404.5, 10-1-102, 10-3-903, 10-3-209, C.R.S., and Colorado Regulation 5-1-10. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has submitted a current rate filing which includes the Policy and Renewal fees in its premium development in order to ensure compliance with Colorado insurance law.

PERTINENT FACTUAL FINDINGS

CLAIMS PRACTICES

Issue F: Delay, in some cases, in the payment of PIP benefits.

Section 10-4-708 C.R.S., Prompt payment of direct benefits, provides, in part:

> (1) Payment of benefits under the coverages enumerated in section 10-4-706(1)(b) to (1)(e) or alternatively, as applicable, section 10-4-706(2) or (3) shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation.

Additionally, Amended Regulation 5-2-8 [Amended and effective September 1, 2000], Timely Payment of Personal Injury Protection Benefits, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue pursuant to §§10-1-109, 10-4-704, 10-4-708(1.3), and 10-3-1110(1), C.R.S.

> Section 3. Rule
>
> B. Prompt Payment of PIP Benefits
>
> Section 10-4-708(1), C.R.S. provides that benefits under the coverages enumerated in §10-4-706, C.R.S. are overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of the expenses incurred.

The following chart illustrates the significance of error versus the population and sample examined:

Private Passenger Auto PIP Claims Paid

Population	Sample Size	Number of Exceptions	Percentage to Sample
1102	50	23	46%

An examination of fifty (50) PIP paid claim files, representing 5% of all PIP claim files paid by the Company during the examination period, showed twenty-three (23) exceptions (46% of the sample) wherein the Company failed to pay at least one PIP medical bill in each file within the thirty (30) day statutory standard as required by Colorado insurance law.

Recommendation # 6:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-708, C.R.S. and Colorado Amended Regulation 5-2-8. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed it claims handling of PIP benefit payments and implemented necessary procedural changes in order to ensure compliance with Colorado insurance law.

Issue G: Failure, in some cases, to handle claims properly.

Section10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, provides, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

(VI) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

The following chart illustrates the significance of error versus the population and sample examined:

Private Passenger Auto Paid Claims

Population	Sample Size	Number of Exceptions	Percentage to Sample
2070	50	4	8%

An examination of fifty (50) paid claims files, representing 2% of all paid claim files handled by the Company during the examination period, showed four (4) exceptions (8% of the sample) wherein the Company failed to handle claims accurately as required by Colorado insurance law.

The incidence of error for this issue was further defined by the following table:

Description
1 instance involving an excessive delay in handling a subrogation request from the adverse carrier resulting in 228 days to make claim payment.
1 instance involving incorrect Sales Tax of 13.42% made on a total loss settlement resulting in an overpayment of the claim.
1 instance involving excessive delay in handling a collision supplemental damage request resulting in 109 days to make claim payment
1 instance involving an overpayment of rental reimbursement in the amount of $522.38 where there was no coverage on the policy

Recommendation # 7:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-3-1104, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its claims handling practices and implemented necessary procedural changes in order to ensure compliance with Colorado insurance law.

Summary of Recommendations

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA

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Independent Market Conduct Examiners
James T. Axman, CIE
Frederick T. Verny Jr., AIE, FLMI
Participated in this examination and in the preparation of this report